

ORDER OF THE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HECTOR LOPEZ,

Plaintiff,

v.

D. SPURGEION, et al.,

Defendants.

No. C 13-0173 RMW (PR)

ORDER DIRECTING PLAINTIFF TO  
PROVIDE COURT WITH MORE  
INFORMATION FOR DEFENDANT  
H. CLOTTA

Plaintiff, a state prisoner proceeding pro se, filed a civil rights complaint against prison officials at Pelican Bay State Prison ("PBSP"), pursuant to 42 U.S.C. § 1983. The court ordered service of plaintiff's civil rights complaint upon defendants. (Docket No. 4.) On May 14, 2013, notices of lawsuit and requests for waiver of service of summons were mailed to the defendants. According to the Litigation Office at PBSP, personnel records for the institution did not reflect employment of defendant H. Clotta. (Docket No. 9.) Accordingly, defendant H. Clotta has not been served.

Although a plaintiff who is incarcerated and proceeding in forma pauperis may rely on service by the Marshal, such plaintiff "may not remain silent and do nothing to effectuate such service"; rather, "[a]t a minimum, a plaintiff should request service upon the appropriate defendant and attempt to remedy any apparent defects of which [he] has knowledge." Rochon v.

1 Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). Here, plaintiff's complaint has been pending for  
2 over 120 days, and thus, absent a showing of "good cause," is subject to dismissal without  
3 prejudice. See Fed. R. Civ. P. 4(m).

4 Because plaintiff has not provided sufficient information to allow the Marshal to locate  
5 and serve defendant H. Clotta, plaintiff must remedy the situation or face dismissal of his claims  
6 against this defendant without prejudice. See Walker v. Sumner, 14 F.3d 1415, 1421-22 (9th  
7 Cir. 1994) (holding prisoner failed to show cause why prison official should not be dismissed  
8 under Rule 4(m) where prisoner failed to show he had provided Marshal with sufficient  
9 information to effectuate service). Accordingly, plaintiff must provide the court with an accurate  
10 and current location for defendant H. Clotta such that the Marshal is able to effect service.

11 If plaintiff fails to provide the court with an accurate and current location for this  
12 defendant within **thirty (30) days** of the date this order is filed, plaintiff's claims against this  
13 defendant will be dismissed without prejudice pursuant to Rule 4(m) of the Federal Rules of  
14 Civil Procedure.

15 IT IS SO ORDERED.

16 DATED:           



RONALD M. WHYTE  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

HECTOR LOPEZ,

Plaintiff,

v.

D. SPURGEON et al,

Defendant.

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Case Number: CV13-00173 RMW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 26, 2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Hector Lopez V00109  
Post office 7500  
Crescent City, CA 95531

Dated: July 26, 2013

Richard W. Wieking, Clerk  
By: Jackie Lynn Garcia, Deputy Clerk